



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. K. v. Canada Employment Insurance Commission*, 2016 SSTADEI 254

Tribunal File Number: AD-16-133

BETWEEN:

**M. K.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division- Leave to appeal decision**

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DECISION BY:: Pierre Lafontaine

DATE OF DECISION: May 10, 2016

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

### **INTRODUCTION**

[2] On October 22, 2015, the General Division of the Tribunal determined that:

- The cancellation of the benefit period pursuant to sections 7, 48 and 49 of the *Employment Insurance Act* (the “*Act*”) and subsection 14 (1) of the *Employment Insurance Regulations* (the “*Regulations*”), should be upheld.
- The cancellation of the benefit period pursuant to sections 7, 48 and 49 of the *Act* and subsection 14 (1) of the *Regulations* should be upheld;
- The Notice of Violation issued pursuant to section 7.1 of the *Act*, should be upheld.

[3] The Applicant requested leave to appeal to the Appeal Division on January 11, 2016 after receiving the decision of the General Division on October 27, 2015.

### **ISSUES**

[4] The Tribunal must decide if it will allow the late application and if the appeal has a reasonable chance of success.

### **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an appeal to the Appeal Division may only

be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *DESD Act* provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **ANALYSIS**

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] In regards to the late application for permission to appeal, the Applicant states that due to financial hardship, he was unable to retain and instruct his legal representatives until December 18, 2015. He pleads that he has an arguable case since the General Division gave undue weight to a questionable confession, misapplied the legal test for the issue of penalty and ignored a previous decision from the General Division involving the same facts and same issues that supports his case. He finally submits that the delay to file his request is not excessive. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant’s request for an extension of time to file his application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of

appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] In support of his application, the Applicant essentially argues the following:

- The Respondent provided a heavily redacted version of the statements and alleged confessions to the board. The Applicant was in possession of the unredacted copy and presented this evidence to the Member. The Member ignored this evidence;
- The alleged confession on which the Member relied upon is a highly questionable piece of evidence and goes to the credibility of the investigators and the investigation as a whole;
- The Member acted in a bias manner by ignoring the Applicant's evidence; The Member states within his decision at paragraph 57, "That there is no way the appellants representative could know all this. He may have surmised this, but he cannot know these are facts.";
- The Member further failed to take into consideration a previous decision of the Board. The TIGIST matter dealt with the same issues, the same evidence was presented and a favorable decision was granted to that appellant;
- The interview conducted by the Respondent on August 25, 2014 is nothing but an interview with respect to Mr. YAGO's business practices. Within this thirty six-page document, there is absolutely no reference to the Applicant;
- The Respondent further claimed that Mr. YAGO is indebted to certain individuals for an unspecified amount of money, and his repayment plans is to issue Record of Employment (ROE) to the debtor's wives (GD3-79). There is no evidence to support such allegations;
- The Respondent erred by basing its decision on a faulty premise. The faulty premise in the case at bar was that the Respondent did not examine nor did

they gather relevant and direct evidence to prove the Respondent's allegations;

- The Member erred in his decision when he stated the applicant "ought to have known". This finding clearly does not meet the requirement to prove that the applicant knowingly committed these offences;
- The Respondent has failed to prove on a balance of probabilities that the claim was made fraudulently or maliciously.

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into all the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[12] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division